

## Item SP06-16 Response Form

**Title: Registered Domestic Partners (amend Cal. Code of Jud. Ethics, canons 3E, 4D, 4H, 5A, 6D, and Terminology section)**

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

(Please print)

Organization: \_\_\_\_\_

☐ **Commenting on behalf of an organization**

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address: Ms. Romunda Price,**  
**Judicial Council, 455 Golden Gate Avenue,**  
**San Francisco, CA 94102**

**Fax: (415) 865-7664      Attention: Romunda Price**

**Internet: [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)**

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, September 1, 2006</b>
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Supreme Court.*

Title	Registered Domestic Partners (amend Cal. Code of Jud. Ethics, canons 3E, 4D, 4H, 5A, 6D, and Terminology section)
Summary	This proposed amendment would insert the term “registered domestic partner” into the California Code of Judicial Ethics wherever there is a reference to a spouse in the code. It would also add a definition of that term to the Terminology section of the code.
Source	Supreme Court Advisory Committee on the Code of Judicial Ethics
Staff	Mark Jacobson, 415-865-7898, mark.jacobson@jud.ca.gov
Discussion	<p>The Supreme Court Advisory Committee on the Code of Judicial Ethics has recommended to the Supreme Court that the term “registered domestic partner” be added to the Code of Judicial Ethics wherever the code refers to a judge’s spouse. The committee has also recommended that a definition of the term be added to the Terminology section of the code.</p> <p>The committee concluded that the term should be included in the code because (1) it is recognized by statute in the Domestic Partner Rights and Responsibilities Act of 2003 (Fam. Code, § 297 et seq.), and (2) the policy reasons underlying certain provisions in the code apply equally to registered domestic partners and spouses.</p> <p>The committee noted that the statute recognizes a domestic partnership only when both persons file a declaration of domestic partnership with the Secretary of State. Therefore, the committee agreed that the appropriate term to insert into the code should be “registered domestic partner,” and that the Terminology section of the code should define that term as including those domestic partners who are registered under state law.</p> <p>The code currently contains numerous references to a judge’s spouse. For example, canon 3E(5) provides that an appellate justice is disqualified if (1) the justice, his or her spouse, or a minor child residing in the household has a financial interest in the proceeding (canon 3E(5)(d)); (2) the justice or his or her spouse is a party to the proceeding (canon 3E(5)(e)); (3) a lawyer or spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the justice or the justice’s spouse (canon 3E(5)(e)); or (4) the justice’s spouse is a witness in the proceeding (canon 3E(5)(f)).</p>

The code's gift provisions also contain references to a judge's spouse. For example, one of the exceptions to the prohibition against receiving gifts is an invitation to the judge and the judge's spouse to attend a bar-related function (canon 4D(6)(a)). Another exception is a gift, award, or benefit incident to the business or profession of a spouse or other member of the judge's family residing in the judge's household (canon 4D(6)(c)).

The committee concluded that the policy reasons underlying these provisions in the Code of Judicial Ethics apply equally to registered domestic partners. If a judge is disqualified because his or her spouse is a party or has a financial interest in a proceeding, there is no reason why the judge should not be disqualified if his or her registered domestic partner is similarly situated. Likewise, in the gift context, if a gift to a judge's spouse incident to the spouse's business is not disallowed under the code, a gift to a domestic partner should be viewed the same way.

In addition, the domestic partner statute affords to registered domestic partners all statutory rights enjoyed by spouses.<sup>1</sup> The statute also subjects registered domestic partners to the same obligations under the law as spouses. Thus, the disqualification provisions for trial court judges in Code of Civil Procedure section 170.1 et seq. appear to require disqualification regardless of whether, for example, a material witness in a case before the judge is the judge's spouse or registered domestic partner. If statutory rights and obligations are applicable to registered domestic partners, the provisions in the Code of Judicial Ethics should also be applicable to them.

The Code of Judicial Ethics also contains numerous references to "members of the judge's family" and to "members of the judge's family residing in the judge's household." For instance, canon 2B(2) states that a judge may initiate communications with a probation or corrections officer concerning a member of the judge's family, provided the judge is not identified as a judge in the communication. Some gift provisions contain references to family members living in the judge's household. Canons 4D(5) and (6), for example, provide that a judge shall discourage members of his or her family residing in

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<sup>1</sup> Fam. Code, § 297.5(a) states: "Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses." Cf. *Knight v. Superior Court* (2005) 128 Cal.App.4th 14.

the judge's household from accepting certain gifts. As with the references in the code to a judge's spouse, the committee agreed that the policy considerations underlying the provisions regarding a judge's family members should also apply to a judge's registered domestic partner. Therefore, the committee recommends that the definitions of "member of the judge's family" and "member of the judge's family residing in the judge's household" in the Terminology section of the code should be amended to include registered domestic partners.

The committee noted that the current definitions of these terms include persons "with whom the judge maintains a close familial relationship." Although these definitions appear broad enough to include domestic partners, the committee concluded that because they specifically include a judge's spouse, and because the term "registered domestic partner" has specific related meaning under the law, the term should be added to the definitions.

A copy of those provisions of the code that would be affected by the recommended amendments regarding registered domestic partners is attached.<sup>2</sup>

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Attachment

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<sup>2</sup> In a matter unrelated to insertion of the term "registered domestic partner" into the code, the committee has also recommended that in the Terminology section, the definition of "temporary judge" be moved so that the defined terms are in alphabetical order.

The Terminology section of the California Code of Judicial Ethics would be amended, effective January 1, 2007, to read:

## TERMINOLOGY

Terms explained below are noted with an asterisk (\*) in the Canons where they appear. In addition, the Canons in which terms appear are cited after the explanation of each term below.

“Appropriate authority” denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported. See Commentary to Canon 3D.

“Candidate.” A candidate is a person seeking election for or retention of judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. The term “candidate” has the same meaning when applied to a judge seeking election to nonjudicial office, unless on leave of absence. See Preamble and Canons 2B(3), the preliminary paragraph of 5, 5A, 5B, 5C, and 6E.

“Court personnel” does not include the lawyers in a proceeding before a judge. See Canons 3B(4), 3B(7)(b), 3B(9), and 3C(2).

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian. See Canons 4E, 6B, and 6F (*Commentary*).

“Law” denotes court rules as well as statutes, constitutional provisions, and decisional law. See Canons 1 (*Commentary*), 2A, 2C (*Commentary*), 3A, 3B(2), 3B(7), 3E, 4B (*Commentary*), 4C, 4D(6)(a)-(b), 4F, 4H, and 5D.

“Member of the judge’s family” denotes a spouse, registered domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B(2), 4D(1) (*Commentary*), 4D(2), 4E, 4G (*Commentary*), and 5A.

“Member of the judge’s family residing in the judge’s household” denotes a spouse or registered domestic partner and those persons who reside in the judge’s household who are relatives of the judge including relatives by marriage, or persons with whom the judge maintains a close familial relationship. See Canons 4D(5) and 4D(6).

“Nonprofit youth organization” is any nonprofit corporation or association, not organized for the private gain of any person, whose purposes are irrevocably dedicated to

1 benefiting and serving the interests of minors and which maintains its nonprofit status in  
2 accordance with applicable state and federal tax laws. See Canon 2C.

3  
4 “Nonpublic information” denotes information that, by law, is not available to the  
5 public. Nonpublic information may include but is not limited to information that is sealed  
6 by statute or court order, impounded, or communicated in camera; and information  
7 offered in grand jury proceedings, presentencing reports, dependency cases, or  
8 psychiatric reports. See Canon 3B(11).

9  
10 “Political organization” denotes a political party, political action committee, or  
11 other group, the principal purpose of which is to further the election or appointment of  
12 candidates to nonjudicial office. See Canon 5A.

13  
14 “Registered domestic partner” denotes a person who has registered for domestic  
15 partnership pursuant to state law.

16  
17 ~~“Temporary Judge.” A temporary judge is an active or inactive member of the bar~~  
18 ~~who, pursuant to article VI, section 21 of the California Constitution, serves or expects to~~  
19 ~~serve as a judge once, sporadically, or regularly on a part-time basis under a separate~~  
20 ~~court appointment for each period of service or for each case heard. See Canons~~  
21 ~~4C(3)(d)(i), 6A, and 6D.~~

22  
23 “Require.” Any Canon prescribing that a judge “requires” certain conduct of  
24 others means that a judge is to exercise reasonable direction and control over the conduct  
25 of those persons subject to the judge’s direction and control. See Canons 3B(3), 3B(4),  
26 3B(6), 3B(8) (*Commentary*), 3B(9), and 3C(2).

27  
28 “Subordinate judicial officer.” A subordinate judicial officer is, for the purposes of  
29 this Code, a person appointed pursuant to article VI, section 22 of the California  
30 Constitution, including, but not limited to, a commissioner, referee, and hearing officer.  
31 See Canon 6A.

32  
33 “Temporary judge.” A temporary judge is an active or inactive member of the bar  
34 who, pursuant to article VI, section 21 of the California Constitution, serves or expects to  
35 serve as a judge once, sporadically, or regularly on a part-time basis under a separate  
36 court appointment for each period of service or for each case heard. See Canons  
37 4C(3)(d)(i), 6A, and 6D.

Canon 3 of the California Code of Judicial Ethics would be amended, effective January 1, 2007, to read:

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL  
OFFICE IMPARTIALLY AND DILIGENTLY

A.–D. \*\*\*

E. Disqualification.

(1)–(4)\*\*\*

(5) Disqualification of an appellate justice is also required in the following instances:

(a)–(c)\*\*\*

(d) The appellate justice, or his or her spouse or registered domestic partner, or a minor child residing in the household, has a financial interest or is a fiduciary who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party. A financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding one thousand five hundred dollars. Ownership in a mutual or common investment fund that holds securities does not itself constitute a financial interest; holding office in an educational, religious, charitable, fraternal or civic organization does not confer a financial interest in the organization's securities; and a proprietary interest of a policyholder in a mutual insurance company or mutual savings association or similar interest is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest. A justice shall make reasonable efforts to keep informed about his or her personal and fiduciary interests and those of his or her spouse or registered domestic partner and of minor children living in the household.

(e) The justice or his or her spouse or registered domestic partner, or a person within the third degree of relationship to either of them, or the spouse or registered domestic partner thereof, is a party or an officer, director or trustee of a party to the proceeding, or a lawyer or spouse or registered domestic partner of a lawyer in the proceeding is the spouse, registered domestic partner, former spouse, former registered domestic partner, child, sibling, or parent of the justice or of the justice's spouse or

1 registered domestic partner, or such a person is associated in the private practice of law  
2 with a lawyer in the proceeding.

3  
4 (f) The justice (i) served as the judge before whom the proceeding was tried or  
5 heard in the lower court, (ii) has a personal knowledge of disputed evidentiary facts  
6 concerning the proceeding, or (iii) has a personal bias or prejudice concerning a party or a  
7 party's lawyer. The justice's spouse or registered domestic partner or a person within the  
8 third degree of relationship to the justice or his or her spouse or registered domestic  
9 partner, or the person's spouse or registered domestic partner, was a witness in the  
10 proceeding.

11  
12 (g)–(h)\*\*\*



Canon 4 of the California Code of Judicial Ethics would be amended, effective January 1, 2007, to read:

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S  
QUASI-JUDICIAL AND EXTRAJUDICIAL  
ACTIVITIES AS TO MINIMIZE THE RISK OF  
CONFLICT WITH JUDICIAL OBLIGATIONS

A.–C. \*\*\*

D. Financial Activities

(1)–(5)\*\*\*

(6) A judge shall not accept and shall discourage members of the judge's family residing in the judge's household\* from accepting a gift, bequest, favor, or loan from anyone except as hereinafter provided:

(a) any gift incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or registered domestic partner or guest to attend a bar-related function or an activity devoted to the improvement of the law,\* the legal system, or the administration of justice;

(b) \*\*\*

(c) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or registered domestic partner or other member of the judge's family residing in the judge's household,\* including gifts, awards, and benefits for the use of both the spouse or registered domestic partner or other family member and the judge, provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(d)–(h)\*\*\*

E.–G. \*\*\*

1 H. Compensation and Reimbursement

2  
3 A judge may receive compensation and reimbursement of expenses as provided by  
4 law\* for the extrajudicial activities permitted by this Code, if the source of such  
5 payments does not give the appearance of influencing the judge's performance of judicial  
6 duties or otherwise give the appearance of impropriety.

7  
8 (1) \*\*\*

9  
10 (2) Expense reimbursement shall be limited to the actual cost of travel, food,  
11 lodging, and other costs reasonably incurred by the judge and, where appropriate to the  
12 occasion, by the judge's spouse or registered domestic partner or guest. Any payment in  
13 excess of such an amount is compensation.

Canon 5 of the California Code of Judicial Ethics would be amended, effective January 1, 2007, to read:

CANON 5

A JUDGE OR JUDICIAL CANDIDATE\*  
SHALL REFRAIN FROM INAPPROPRIATE  
POLITICAL ACTIVITY

Judges are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, avoid political activity that may create the appearance of political bias or impropriety. Judicial independence and impartiality should dictate the conduct of judges and candidates\* for judicial office.

A. Political Organizations

Judges and candidates\* for judicial office shall not

(1) act as leaders or hold any office in a political organization;\*

(2) make speeches for a political organization\* or candidate\* for nonjudicial office or publicly endorse or publicly oppose a candidate for nonjudicial office; or

(3) personally solicit funds for a political organization\* or nonjudicial candidate;\* or make contributions to a political party or political organization\* or to a nonjudicial candidate in excess of five hundred dollars in any calendar year per political party or political organization\* or candidate,\* or in excess of an aggregate of one thousand dollars in any calendar year for all political parties or political organizations\* or nonjudicial candidates.\*

ADVISORY COMMITTEE COMMENTARY

*The term “political activity” should not be construed so narrowly as to prevent private comment.*

*This provision does not prohibit a judge from signing a petition to qualify a measure for the ballot without the use of the judge’s official title.*

*In judicial elections, judges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone including attorneys. Nevertheless, there are necessary limits on judges facing election if the appearance of impropriety is to be avoided. Although it is improper for a*

1 judge to receive a gift from an attorney subject to exceptions noted in Canon 4D(6), a  
2 judge's campaign may receive attorney contributions.

3  
4 Although attendance at political gatherings is not prohibited, any such attendance  
5 should be restricted so that it would not constitute an express public endorsement of a  
6 nonjudicial candidate\* or a measure not directly affecting the administration of justice  
7 otherwise prohibited by this Canon.

8  
9 Subject to the monetary limitation herein to political contributions, a judge may  
10 purchase tickets for political dinners or other similar dinner functions. Any admission  
11 price to such a political dinner or function in excess of the actual cost of the meal shall  
12 be considered a political contribution. The prohibition in Canon 5A(3) does not preclude  
13 judges from contributing to a campaign fund for distribution among judges who are  
14 candidates for reelection or retention, nor does it apply to contributions to any judge or  
15 candidate\* for judicial office.

16  
17 Under this Canon, a judge may publicly endorse another judicial candidate.\*  
18 Such endorsements are permitted because judicial officers have a special obligation to  
19 uphold the integrity and impartiality of the judiciary and are in a unique position to know  
20 the qualifications necessary to serve as a competent judicial officer.

21  
22 Although members of the judge's family\* are not subject to the provisions of this  
23 Code, a judge shall not avoid compliance with this Code by making contributions  
24 through a spouse or registered domestic partner or other family member.

25  
26 B.-D. \*\*\*

Canon 6 of the California Code of Judicial Ethics would be amended, effective January 1, 2007, to read:

CANON 6

COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS

A.–C. \*\*\*

D. Temporary Judge\*, Referee, or Court-Appointed Arbitrator<sup>1</sup>

A temporary judge, a person serving as a referee pursuant to Code of Civil Procedure section 638 or 639, or a court-appointed arbitrator shall comply only with the following Code provisions:

(1)–(2)\*\*\*

(3) A temporary judge shall, from the time of notice and acceptance of appointment until termination of the appointment, disqualify himself or herself in any proceeding as follows:

(a) A temporary judge—other than a temporary judge solely conducting settlement conferences—is disqualified to serve in a proceeding if any one or more of the following is true:

(i)–(iv)\*\*\*

(v) the temporary judge, or the spouse or registered domestic partner of the temporary judge, or a person within the third degree of relationship to either of them, or the spouse or registered domestic partner of such a person is a party to the proceeding or is an officer, director, or trustee of a party;

(vi) a lawyer or a spouse or registered domestic partner of a lawyer in the proceeding is the spouse, former spouse, registered domestic partner, former registered domestic partner, child, sibling, or parent of the temporary judge or the temporary judge's spouse or registered domestic partner, or if such a person is associated in the private practice of law with a lawyer in the proceeding; or

(vii) \*\*\*

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<sup>1</sup> Reference should be made to relevant commentary to analogous or individual Canons cited or described in this Canon and appearing elsewhere in this Code.

1	(b)–(d)	***
2		
3	(4)–(12)	***
4		
5	E.–H.	***